

August 13, 2022

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington DC 20551

RE: Comments on Regulation ZZ; Docket No. R-1775, RIN 7100-AG34.

By Email to regs.comments@federalreserve.gov

Thank you for the opportunity to provide comments on the above cited rule being considered by the Federal Reserve Board (Board). Three recommendations are offered to improve the proposed rule:

Recommendation #1: The Board should consider conducting survey research for a representative sample of small businesses to determine if and how the rule will affect them.

Recommendation #2: The Board should conduct a policy analysis for the rule illustrating the effects on small business entities. An analysis of alternatives for small business should be developed.

Recommendation #3: An exemption for small businesses should be granted if the Board can't determine how the proposed rule will affect them.

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Background and Discussion

The Regulation Implementing the Adjustable Interest Rate (LIBOR) Act was distributed by an email dated July 19, 2022. A portion of the rule discussed a “Regulatory Analysis” under

the “Regulatory Flexibility Act” under Section IV. A. This discussion is located beginning on page 36 of the proposed rule. The Board stated that:

“The Board does not believe that it is feasible to provide an estimate of the number of small entities to which the proposed rule will apply.” (Page 38 of the Proposed Rule).

The Board also stated in Footnote 98 that they believe that the rule applies to a substantial amount of small businesses:

“...The Board has considered the SBA standards and expects that a potentially substantial number of small entities, across many industries, likely would be affected by the proposed rule.” (Pages 38 to 39 of the Proposed Rule).

The Board should conduct survey research for a representative sample of small businesses to determine if and how the rule would affect them. This will provide the Board with sound information so they can determine if and how the proposed rule will affect small businesses. If the Board can’t determine the effect of the rule on the substantial number of small businesses, an exemption for them should be applied as part of the final rule. Exemptions are permitted under Section 603 (c) (4) of the Regulatory Flexibility Act. See the following language from the Regulatory Flexibility Act which mandates that an analysis of alternatives and an exemption if required may be permitted under the law:

(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as— [Emphasis added]

- (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
- (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
- (3) the use of performance rather than design standards; and

(4) **an exemption from coverage of the rule**, or any part thereof, for such small entities. [Emphasis added].

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The Board is required to conduct a policy analysis concerning new regulatory requirements that it develops. The document put out for comment provided a statement about how the effects of the rule are unknown for small business entities. If the rule is adopted it will have been implemented without a complete policy analysis being conducted. This is why an exemption to the rule for small businesses should be applied. The United States Congress anticipated that problems of this type would occur. They provided for the exemption in implementing such rulemaking in Section 603 c. (4) of the Regulatory Flexibility Act.

The United States Congress also considered the need to examine alternatives when a rule such as the one being proposed is implemented. See the Regulatory Flexibility Act 604 (5) which states:

(5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected. (b) The agency shall make copies of the final regulatory flexibility analysis available to me

The proposed rule does not contain a careful study of alternatives for small entities are required by the Regulatory Flexibility Act. The analysis of alternatives should be completed as part of the policy analysis for the proposed rule.

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Summary and Recommendations

The final rule can be improved if three simple steps are taken. The following recommendations are offered to improve the proposed rule:

Recommendation #1: The Board should consider conducting survey research for a representative sample of small businesses to determine if and how the rule will affect them.

Recommendation #2: The Board should conduct a policy analysis for the rule illustrating the effects on small business entities. An analysis of alternatives for small business should be developed.

Recommendation #3: An exemption for small businesses should be granted if the Board can't determine how the proposed rule will affect them.

Thank you for the opportunity to comment of the proposed rule.

Sincerely yours,

-s-

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